

APPROVED 11/19/03

TOWN OF WESTFORD

ZONING BOARD OF APPEALS

MINUTES

DATE: September 11, 2003

TIME: 8:05 A.M.

PLACE: Conference Room, Millennium Building, 23 Depot Street

PRESENT: Sam Frank, Roger Hall, Dave Earl, Jim Kazeniac

ABSENT: Ron Johnson, Jay Enis, Bob Herrmann

OTHERS

PRESENT: Jennifer Burke-Permitting Office Manager; Ellen Callahan Doucette-Town Counsel; Norman Khumalo-Assistant Town Manager; Attorney Mark Bobrowski; James Silva-Board of Selectmen-*arrived at 8:57 a.m.*; Attorney Douglas Deschenes; Robert Walker-Developer

ROSEGATE AT WESTFORD, 99 MAIN STREET
Board to Review Second Draft Decision and Deliberate

Deschenes stated that he met on Monday, September 8, 2003 with Frank, Hall, Burke and Khumalo to review the second draft approval with conditions. Deschenes provided his client's position relative to the second draft in writing dated September 10, 2003. The Board reviewed the letter provided by Deschenes and made the following comments and/or revisions to the conditions:

5. *Submission and approval of the final Regulatory and Deed restriction should be based on occupancy permits, otherwise we are subject to the schedule of the town counsel in starting construction. The issue of the proof of subsidy commitment has been satisfied by the site approval letter provided. Furthermore, the issue of private funding a Mass Housing approved project is being raised with DHCD separately. This is not an issue that should be addressed in the decision.*

After discussion, Deschenes agreed to have the Regulatory Agreement being completed prior to building permits. Deschenes also agreed to the Deed Rider.

Deschenes stated that the developer considered the Board's suggestion of reducing the number of units from 12 to 10. Deschenes outlined the various options the developer looked at with regard to the configuration. Walker indicated that after looking at the options, a reduction in units was deemed to be uneconomic. The Board discussed with Deschenes and Walker the profit, costs, etc. relative to 12 units versus 10 units.

7. *Applicant will conform to all "applicable" local, state and federal regulations...We do not agree with being subject to "amendments of such statutes...with the same effect as if mentioned..." This would essentially eliminate any grandfathering we would have and subject us to amendments after the fact. Also we would agree to the same restriction on construction work times as are standard for all other projects in town.*

The Board agreed with inserting the word "applicable".

9. *Control of the condo association and therefore the responsibility for maintenance of the project infrastructure will pass to the Association at the point my client no longer owns a majority of the units.*

Bobrowski stated that this clause keeps the developer on track to complete the project. Walker stated that the project will be completed before the sale of any units. Deschenes agreed to the clause.

10. *Why should the town review the condominium documents. If the town has specific requirements list them and then verify they are in the document. There is no need or justification for a review of the condo docs. In the event Town Counsel is reviewing any documents, we would like a defined time and cost for such review (i.e., cost not to exceed XXX). This is true for any further reviews, my client is not willing to agree to open ended review times and costs. We cannot then determine the impact this will have on the project economic feasibility. Also, all unit owners will be association members as part of the condominium documents (i.e., Master Deed, Bylaws, etc.), why would we have a separate deed restriction??*

Deschenes asked if the Board would agree to a certain amount of hours for review of provisions in the condominium documents. Doucette stated that considering most of the documents are form condo documents just a " cursory" review to make sure what the Board ultimately approves is in there is all that she would need to do. Doucette indicated that the review could be done in two or three hours. Bobrowski suggested the following language: Review of the documents shall be limited to the determination of consistency with this decision. Deschenes agreed to that language.

11. *Again, we will agree to maintenance requirements regularly imposed on projects in time and cannot agree to requirements beyond what is standard and typical.*

Deschenes asked to be consistent with Conservation Commission and Planning Board requirements.

13. *This goes beyond any thing imposed on any other condominium project, or any project in town for that matter including projects with waste water treatment plants. To the extent this exceeds Title V or DEP standards, it is not acceptable.*

Walker agreed to this provision.

14. *We believe, most if not all of these plans, in final form have been submitted and are part of the decision, therefore this section should reference only the plans, if any, not submitted.*

Deschenes outlined the plans that have been submitted to the Board. Deschenes indicated that there will be no signs on the property. Bobrowski suggested the

following language: Prior to the issuance of the building permit the Applicant shall submit final engineered plans for the approval by the Board of Appeals or its agent, such approval shall not be unreasonably withheld, any failure to act within thirty (30) days shall be deemed approval thereof. Deschenes agreed. Deschenes stated that the Applicant will not provide a separate open space and recreational plan. Deschenes stated that they would identify on the plan the back grassed area as proposed.

16. *The issue of the detention basin construction and stabilization is an issue addressed by the Conservation Commission Order of Conditions. I do not believe this requirement as drafted has ever been required of a Project in Town. This is not to say that a requirement that the basin be constructed and stable is not typical, but requiring vegetation to be grown is unusual and therefore not typical.*

17. *The construction sequence is on the Plans.*

Deschenes stated that the construction sequence has been provided on the erosion control plan as required by the Conservation Commission. The Board to remove condition 16 and add “erosion control plan” to condition 17.

18. *The last sentence is problematic. It obligates my client to “any” condition required by the BOH. We are comfortable with a requirement that we obtain BOH permit and build in accordance therewith, but the proposed language is too broad.*

Bobrowski suggested adding to condition 35: ...or the Board of Health’s permit regarding the property, if any, shall be made a part of this comprehensive permit... Deschenes agreed.

19. *See 13 above.*

Doucette believed that this was Title V requirement. Bobrowski suggested removing condition 19 and add to condition 13 the following language: ...and the Applicant shall convey any easement necessary to implement such regulations, including a Title V Covenant and Easement pursuant to State Sanitary Codes. Deschenes agreed.

20. *I believe that a restriction against garbage disposals in on the plans, although I do not understand the justification for this requirement. It has never been imposed on any other project that I know of in Westford. In any event the prohibition, if required would be part of the condominium documents. See 10 above relative to town counsel review.*

Doucette stated that the Board was concerned with longevity of the system. Deschenes stated that this restriction will be in the Master Deed and is also noted on the septic plan.

28. *We would request that any further reviews required list a time frame or scope and a not to exceed cost. See 10 above.*

Deschenes asked that the plans not go back to Howe Engineering unless there is a technical issue that needs to be checked. Deschenes suggested the following language: The Applicant shall promptly pay the reasonable fee of the consulting engineer relating from any substantial change to the project and the Board’s legal counsel for review of the documents as described herein. The Board agreed.

29. *We will not agree to pay for inspections normally done as part of the building process in Westford. Therefore, what other inspections are there?? This project should not be treated differently than other building projects in town.*

The Board removed the language: *at the expense of the applicant.*

33. *We cannot agree to bonding any aspect of the project. While it has been suggested that allowing bonding of certain parts of the project may be advantageous to my client in the event he wants occupancy permits and cannot finish a vital aspect of the project due to weather or other circumstances, we cannot determine what that may be. I believe that only roadways, sidewalks and drainage are typically subject to bonding under Planning Board Rules and Regulations. This will not apply to the project.*

Walker asked that condition 33 be removed. Bobrowski removed conditions 37 and 38 and a portion of condition 33.

Deschenes stated that the Conservation Commission cannot issue an Order of Conditions until the Zoning Board of Appeals votes on the requested waivers. Deschenes asked the Board to consider taking action on the two requested waivers as soon as possible. Frank recommended discussing the request on September 17, 2003.

ADJOURNMENT

The meeting adjourned at 9:40 a.m.

Submitted by Beth Kinney, Recording Secretary